IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 150 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN and

MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ILIAS @ Kaju Hamidbhai
vs
State of Gujarat

Mr. Anil S.DAVE for Petitioner
MR.K.P.RAVAL A.G.P. for Respondent No. 1

CORAM : MR.JUSTICE R.R.JAIN and

MR.JUSTICE H.R.SHELAT
Date: 12.2.1996

Oral Judgment(Per:Shelat.J)

This appeal has been directed against the judgment and order dated 25.2.88, delivered by the then learned Addl. City Sessions Judge, Ahmedabad in Sessions Case No. 192/87, whereby the appellant came to be convicted of the offence punishable under section 302 IPC and sentenced to R.I. for life.

2. Few facts in order to explore the points that arise for consideration may be stated Israr Ahmed, Dahyabhai and others were working in Shri Hans Engineers and Fabricators situated on the back side of the post office in Isanpur area of Ahmedabad city. It is alleged by the prosecution that the appellant had fallen love with a girl named Nainaben Govindbhai . She used to write chit i.e. billet doux to the accused no.1 and used to send the same through the deceased. One of such chits written by Nainaben remained in the possession of the deceased. The appellant was insisting for the same. On 30.7.87 in the morning at 7.00 a.m. when the appellant and the deceased met they talked about the chit. The appellant demanded the chit; while the deceased expressed his inability saying that it was at his home and would be given later on after going to home. The impatient appellant wanted the chit then and there. There was therefore, a hot exchange of words. The deceased then abused the appellant and also gave a slap on his cheek. The appellant then brought out the knife he was having and gave 3-4 blows on the chest of the deceased. The deceased sustained fatal injuries. He died when he was being taken to the hospital for treatment. A complaint was then lodged against the appellant before the Vatva Police Station for the offence of murder. A charge sheet was then filed in the court of the learned Metropolitan Magistrate, Ahmedabad who committed the case to the City Sessions Court. The case came to be registered as Sessions Case No. 192/87. At the conclusion of the trial, the then learned Addl. City Sessions Judge found that the evidence on record was sufficient to hold the appellant guilty and therefore, the appellant came to be convicted and sentenced as stated above. Siraj Ahmed Raju who was also tried for the offence came to be acquitted. As the appellant has been convicted, he has approached this court by way of this appeal.

3. The learned advocate representing the appellant initially took us to the entire evidence on record in order to strut his contentions and convince us that the learned Judge below was not at all right in reaching the conclusions against the appellant as it was a case of

clear cut acquittal. But after we made several queries he taperred of his submissions confining to the applicability of a particular penal provision. Consequently whether conviction and sentence can be sustained of the offence u/s 302 and if not which of the penal provision would come into play has to be examined. Whenever applicability of the penal provision has to be ascertained, the intention of the offender at the time of commission of the offence being material should be ascertained . So far as the intention is concerned, it is the internal and invisible process of the mind of the offender and therefore, it has to be judged on the basis of external and visible acts or evidence on record. In this case, for the applicability of penal provision, dissecting the evidence the intention of the appellant is required to be gathered.

4. Chunilal Ramjibhai (exh.20) and Dahyabhai Samjibhai(exh.21) are examined being the eye witnesses to the incident. Their evidence is required to be considered. Of course other witnesses are examined and they support the part of the prosecution case except the real occurrence as they either reached little late or after the incident was over but when happening of the incident is not challenged before us, we do not think it necessary to refer their evidence. On perusal of the evidence of Chunilal Ramjibhai and Dahyabhai Ramji what can be deduced is that the appellant and deceased were close friends. They did not have any reason to cultivate inimical terms or give shape to arch-rivalry. They were bosom friends, used to share good and bad events in life and nothing was secret between the two. Always both stood side by side, and both were loyal & sincere , treachery was unknown to them. The deceased was therefore, the faithful messanger for Nainaben & the appellant. Both used to send billet doux or reply thereof through the deceased. No one had therefore, a reason to hover for satisfying his ill will. In this back ground if the case is viewed the intention to kill can never be spelt out.

5. On the ill-fated day, in the morning, the appellant demanded the chit, because, he being very eager wanted to know what was the message but unfortunately the chit was not on hand . It was then clarified that the chit being at home, would be handed over after going back to home. The impatient appellant wanted to have the chit then and there. He therefore, persisted for the same and in high dudgeon, he becoming infactuated did not appreciate the inability of the deceased Idiotically he went on demanding the chit , onan in the evening started

to abuse. The deceased then slapped the appellant and abused him. The appellant therefore, lost his temper and in high dudgeon he brought a knife about 7" in length including the handle and gave blows, as a result, the deceased sustained fatal injuries and succumbed to the same.

6. The learned Judge below has misconstrued such facts indicating the manner in which the incident happened. According to him, the abuses grave in nature i.e. in the name of mother and father would provoke a man. As the abuses were not of gravely irritant nature, the appellant must not have been enraged. However, he did the wrong which would squarely fall within the ambits of section 302 I.P.C. Some may not be provoked by a mild abuse while some may not even connive mild abuse and would be provoked to the extent of breaking public peace or committing any offence. It is not necessary that there should be vulgar abuse. It all depends upon the degree of tolerance power one possesses. By the abuses and further being slapped the appellant felt that he was being in the prepsence of others lowered down, ridiculed and would be looked down upon. It seems he therefore lost his temper, and because of such sudden provocation, he committed the wrong showering knife blows. The learned Judge has over looked this stimulative factor i.e. storm in a tea cup leading many to react boisterously or frenziedly. It may be stated here that in the morning by intervention of some, the appellant was pacified but in the evening he again picked up quarrel by insisting for the chit & abusing. Hence there was exchange of hot words followed by a slap from the deceased. The appellant then did the wrong.In our view therefore,the appellant committed the wrong out of grave and sudden provocation at the spur of moment.

7. Mr. Raval the learned A.P.P. representing the prosecution submitted that, when the knife blows were showered on the vital part of the body, intention to kill and nothing else can be assumed. In our view always the blow on the vital part or number of blows may be on the vital part or other part of the body will not necessarily indicate the intention to kill. The blows given , part of the body affected, weapon used, and nature of injuries are to be appreciated keeping facts and circumstances on record or in the context of the genetic background emerging on record, for determining the intention of the accused. To put in different words the blows and vital part of the body will not always be the decisive factor to judge the intention; the same have to be considered alongwith other facts and circumstances on record for

ascertaining the intention. Hence every case has to be judged on the basis of its peculiar facts and circumstances on record. In this case, looking to the above circumstances, if the case is viewed, we do not think that there is any justification to take the view canvassed by the learned A.P.P. very vehemently. At this stage we think it proper to refer to the decision of the Supreme Court In the case of Surinder Kumar vs. Union Territory,Chandigarh reported in AIR 1989 SC 1094 the applicability of a particular provision has been discussed. In para 6 it has been made clear that to invoke the exception, four requirements must be satisfied, viz.(i) it was a sudden fight, (ii) there was no premeditation, (iii) the act was done in heat of passion and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. In that case also taking out a pen-knife, the injuries were caused and one of the injuries proved fatal. Considering the overall view of that case the Supreme Court found that the accused in that case was entitled to the benefit of exception and the High Court was not right while refusing to grant him benefit of exception on the ground that the accused had acted in a cruel manner. The Supreme Court observed that merely because 3 injuries were caused by knife, it cannot be said that the accused acted in a cruel manner or an unusual manner. Conviction in that case was then altered to section 304 part.II IPC. In view of this decision which is a clear answer to the submissions raised on behalf of the prosecution, we do not accept the submission advanced on behalf of the prosecution . All the requirements are in view of the facts discussed hereinabove present in the case on hand, entitling the appellant to have benefit of the exception.

8. In view of the above set of circumstances which led the appellant to commit the wrong, his intention to kill cannot be spelt out, but it can be said that when he acted in grave and sudden provocation without premeditation, he must have knowledge that what he was doing might cause death . Hence the case would fall within the ambits of section 304 Part.II IPC and not under section 302 IPC. The learned Judge below therefore,was not right in convicting the appellant for the offence under section 302 IPC.

9. For the aforesaid reasons, the appeal will have to be partly allowed and sentence under section 302 IPC will have to be quashed and the same will have to be altered to section 304 Part II IPC.

10. Now the question of quantum of punishment arises

for examination. We are told that the appellant is in jail from 2.8.87. By now he has undergone the imprisonment of 8 years and five months. In our view, the sentence undergone is sufficient and adequate. . In the result, the appeal is partly allowed. The conviction and sentence of the offence u/s.302 IPC are quashed and set aside and the appellant is acquitted thereof; but altering the conviction and sentence the appellant is convicted of the offence u/s 304 Part.II IPC. and the sentenced to imprisonment already undergone by now. As the sentence of imprisonment we are inflicting is served out, the appellant is entitled to liberty forthwith. He, be therefore, set at liberty forthwith, if no longer required in any other case. The muddamal articles are ordered to be disposed of as per the order of the Lower Court.

for correction pl.see the original